

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGED
VIOLATIONS OF THE
UNDERGROUND FACILITY
PROTECTION ACT,
N.J.S.A. 48:2-73 ET SEQ.

ORDER ACCEPTING SETTLEMENTS

DOCKET NOS. TS05080687K-
CS05080714K
ES05030242K-
GS05030253K
AS05030255K-
GS05030260K
GS05030262K-
TS05030272K
and
WS04121727K

(see attached Appendix)

(SERVICE LIST ATTACHED)

BY THE BOARD¹

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 et seq. The primary purpose of the Act is to establish the One-Call Damage Prevention System for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid. In declaring its findings and the purpose of the Act, the Legislature stated, in pertinent part:

1 Commissioner Connie O. Hughes recused herself from voting on Docket Nos. ES05030252K and
2 TS05030246K based upon a possible conflict of interest. Commissioner Joseph L. Fiordaliso did not
3 participate in the deliberation of or vote on this matter.

[T]hat damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition. N.J.S.A. 48:2-74.

The Act defines "excavator" as "any person performing excavation or demolition," while the term "operator" is defined as "a person owning or operating, or controlling the operation of, an underground facility . . ." N.J.S.A. 48:2-75. The One-Call Damage Prevention System ("the System") coordinates communication and responsive action between these two groups of persons. N.J.S.A. 48:2-80, -82.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000 and not more than \$2,500 per violation per day. N.J.S.A. 48:2-88. Violation of a provision relating to natural gas or hazardous liquid underground pipelines or distribution facilities shall subject the violator to civil penalties not to exceed \$25,000 per day and not to exceed \$500,000 for any related series of violations. In addition, the violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

Following reports of failure to call the System prior to commencing excavation or demolition activities, failure to hand dig and locate facilities, failure to use reasonable care, or reports of failure to mark out underground facilities or properly mark them, Board Staff contacted the entities listed on the Appendix and informed them of the date and location of the alleged violations, also listed on the Appendix.

In an attempt to resolve these matters, each excavator or operator has submitted an Offer of Settlement to the Board for its consideration, the dollar amount of each being given on the Appendix. After consideration of these matters, the Board HEREBY ACCEPTS these offers of settlement in full settlement of the above referenced alleged violations of the Act.


By acceptance of the various Offers of Settlement and the timely payment thereof, the Excavator or Operator has waived any rights to a hearing and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above referenced alleged violations of the Act. It must also be noted that


the acceptance of the Offers of Settlement are for settlement purposes only and apply strictly to the specific incidents set out in the Appendix. This acceptance is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof if other violations are present, now or in the future.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

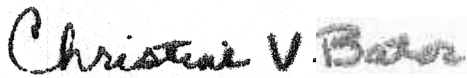
DATED: 7/21/06

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

